Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 12723 of 2018- DB

(Arising out of Order No. MUN-CUSTM-000-APP-082-18-19 dated 19.06.2018 passed by Commissioner (Appeals) -Ahmedabad)

Jindal Saw Limited ....**Appellant**
Village, Samagogha,
Mundra-Kutch-Gujarat

VERSUS

C.C.– Mundra ......**Respondent**
Office of The Principal Commissionerate of Customs,
Port User Buld., Custom House Mundra,
Kutch, Gujarat-370421

APPEARANCE:
Shri R. Santhanam, Advocate appeared for the Appellant
Shri Girish Nair, Assistant Commissioner (Authorised Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIRHON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. 12877 /2024

DATE OF HEARING: 27.11.2024
DATE OF DECISION: 27.11.2024

RAMESH NAIR

This appeal is directed against order is appeal No. MUN-CUSTM-000-APP-082-18-19 dated 19.06.2018 passed by the Learned Commissioner (Appeals), whereby he rejected the appeal on the ground of time bar as well as on merit.

2. Shri R. Santhanam, learned Counsel appearing on behalf of the appellant, at the outset, submits that the appeal was rejected on time bar as well as on merit, therefore, this Tribunal may decide the case on merit. As regard time bar, he submits that Commissioner (Appeals) held in the impugned order that the appellant have not filed the COD Application for delay of one day. It is his submission that the order dated 26.05.2017 was communicated to the appellant only on 31.05.2017 which is mentioned in the appeal memo as date of communication and appeal was filed on 31.07.2017, therefore, the appeal is filed within the time for the reason that 29^{th} and 30^{th} July 2017 were Saturday and Sunday. Hence the next working day i.e. 31.07.2017 is well within normal period of 60 days, therefore, there is no delay before Commissioner (Appeals) in filing the appeal. He submits that since the Commissioner (Appeals) has given a detailed finding on merit

also this Tribunal can decide the merit also. He argued in detail on merit of the case also.

3. Shri Girish Nair, Learned Assistant Commissioner (AR) appearing on behalf of the revenue submits that since the appeal before Commissioner (Appeals) was dismissed on time bar, the finding on merit is of no meaning and the same cannot be dealt by this Tribunal as the Commissioner (Appeals) could not have decided the matter on merit.

4. We have carefully considered the submission made by both the sides and perused the records. We find that though there is delay in filing the appeal before the Commissioner (Appeals), but once he has rejected the appeal on time bar, then the appeal does not remain admitted in the office of the Commissioner (Appeals). In such case, without admitting the appeal, no finding on merit could have been given, therefore, the order of the learned Commissioner (Appeals) on the merit is without any jurisdiction. Accordingly, the finding given on merit became infructuous and the same is expunged. As regard, the Commissioner's finding on time bar, we agree with the learned Counsel's submission that the date of communication declared in the appeal memo before Commissioner (Appeals) is 31.05.2017 and appeal was filed 31.07.2017, therefore the appellant have filed the appeal on 61st day however 29th and 30th of July 2017 being Saturday and Sunday, so rightly filed within the time on 31.07.2017, therefore, there is no delay in filing the appeal. Accordingly, we set aside the impugned order and remand the matter to the Commissioner (Appeals) to pass a fresh order only on merit of the case.

(Operative portion of the order pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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